

January 23, 2004

**Application Summary**  
(For Commission consideration on February 5, 2004)

**Number:** 1-02  
**Date Filed:** December 22, 2003  
**90th Day:** March 21, 2004  
**Staff Assigned:** Leslie Lacko (415/352-3616 [lesliel@bcdc.ca.gov](mailto:lesliel@bcdc.ca.gov))

**Summary**

**Applicant:** Waldo Point Harbor, LLC; Lewis Cook, General Manager

**Location:** In the Bay and within the 100-foot shoreline band, on Gate 5 Road, near the City of Sausalito, in an unincorporated area of Marin County.

**Project:** On May 20, 1971, the Commission approved Permit No. 5-71, which authorized houseboat berths, docks and associated facilities at Waldo Point Harbor (WPH) for a period of 20 years. The amended permit expired in 1992 and the harbor has existed without a Commission permit since that time. The applicant is seeking a 20-year authorization of the portion of Waldo Point Harbor authorized in the expired BCDC Permit No. 5-71 as well as authorization for additions to the harbor. The portions of the harbor authorized under BCDC Permit No. 5-71 include the following: (1) 245 houseboat moorings; (2) 25,280 square feet of pile-supported fill for five docks; (3) 1.1 acres of solid fill to improve shoreline appearance and public access; and (4) parking, road, and building upgrades to improve the appearance of the shoreline. In addition to houseboats, docks and other facilities authorized by the expired BCDC Permit No. 5-71, Application No. 1-02 includes the following major additions: (1) 38 Gates Co-op houseboats (after-the-fact); (2) an approximately 360-foot-long, floating dock; (3) remodel and expansion of the harbor master's office including a harbor maintenance area in the basement level; (4) solid fill to raise the public access area and parking lot to seven feet above Mean Sea Level; (5) portions of a new paved parking lot; (6) on-site public access improvements; and (7) pile-supported fill for two public access piers.



**Issues****Raised:**

The staff believes that the application raises six primary issues:

- (1) whether the proposed fill is consistent with the McAteer-Petris Act and Bay Plan policies regarding fill in the Bay; (2) whether the project would provide maximum feasible public access, consistent with the project;
- (3) whether the project is consistent with the *San Francisco Bay Plan* policies on houseboats; (4) whether the project is consistent with the *Richardson Bay Special Area Plan*; (5) whether the project is consistent with the *Bay Plan* policies on mitigation; and (6) whether the project is consistent with the Public Trust.

**Background**

Waldo Point Harbor is a 245-berth houseboat marina in Richardson Bay, near the City of Sausalito. The marina is owned by a limited liability company called Waldo Point Harbor. Berths on the five docks as well as nine grounded houseboats (or arks) at the harbor are leased to individual houseboat owners. The marina was subject to the terms and condition of a BCDC Permit No. 5-71 issued in 1971, but this permit expired in 1992. WPH never complied with all of the requirements of the permit. In part, this was due to the fact that a large number of houseboats belonging to members of a group called the Gates Cooperative (Gates) came to be located in the middle of the harbor, in an area that was supposed to be maintained as open space under the BCDC permit. The houseboats were not connected to the shore with permanent docks and for many years also were without formal sewer, electrical or water service. The location of the Gates houseboats also prevented WPH from completing shoreline access improvements required as a condition of the permit. In addition to these problems, there were many other violations of the provisions of the permit. Consequently, between 1972 and 1988, BCDC was in constant communication with WPH seeking compliance with the BCDC permit.

The marina is built on both privately-owned tideland lots and publicly-owned underwater streets that were created when the lots were sold in the 1870's by the Board of Tideland Commissioners. These underwater streets are the subjects of a grant from the State to the County of Marin (County). Under the terms of the grant, the State Lands Commission is required to monitor the County's actions to ensure that they are consistent with the purposes and uses specified in the grant. In 1979, the State Lands Commission became aware of a lease between the County and WPH under which WPH paid one dollar a year to use portions of the underwater streets for the berthing of houseboats. The State Lands Commission notified the County and WPH that private residential use of the underwater streets is inconsistent with the terms of the grant and, more importantly, is inconsistent with the Public Trust.

**The Litigation.** In 1988, WPH sued BCDC, the State Lands Commission and the County. The suit sought a declaration that residential use of the streets is consistent with the grant and the Public Trust. It also claimed the state agencies and the County should be estopped from denying future use of the harbor for residential purposes.

The County and state agencies filed an opposition which noted that WPH's authorization to use the harbor for a marina would expire, at the latest, when the BCDC permit expired in 1992. BCDC also filed a cross-claim against WPH and Gates alleging that there were serious violations of both the existing BCDC permit and the McAteer-Petris Act. At the time this cross-claim was filed, there were approximately 78 houseboats belonging to Gates members at unauthorized locations within the harbor.

**The First Settlement.** In 1992 the County, WPH and the state agencies reached a settlement of their litigation. Under the terms of the settlement, the State Lands Commission and WPH agreed to a land exchange that would provide WPH with fee ownership of an open water area in the center of the harbor, plus an adjacent 1.1-acre upland area that would be used for a public park. The State Lands Commission cannot agree to a land exchange unless it determines that the exchange will provide a benefit to the public. In this situation, State Lands determined the settlement would benefit the public by, among other things, preserving open space and providing public views through the harbor along this congested portion of the shoreline. WPH also agreed to provide public access improvements along the shoreline and to remove all unpermitted fill. The settlement was thus consistent with the public access and open space requirements of the 1972 BCDC permit. In recognition of WPH's violation of the terms of the 1972 permit, the settlement provided that WPH would pay a \$200,000 penalty payable to the Bay Fill Clean-up and Abatement Fund.

The proposed land trade also required alterations to the existing marina to remove some of the houseboats from areas that would be retained by, or transferred to, the public and to provide for better public views through the harbor. To furnish room for additional berths for the houseboats that would be moved as a result of these modifications to the marina, WPH would be permitted to extend the ends of "B," "D," and "E" Docks, three of the five existing docks at the harbor, into Richardson Bay. The settlement was made contingent on WPH applying for and receiving necessary permits for the reconfigured marina. The settlement specifically stated, however, that the County and BCDC were not bound to approve any permit applications submitted by WPH and, indeed, they reserved the authority to approve, conditionally approve, or deny the applications. In the event that WPH's applications were denied, the parties would continue the litigation.

**The Second Settlement.** In 1993 the settlement agreement was amended to include Gates as a party. This agreement provided for an adjustment to the land trade to allow sufficient room for WPH to apply for up to 41 new berths scattered throughout the harbor for houseboats belonging to Gates members. The agreement specifically provided, however, that less than 41 berths might be approved. The Gates houseboats also would have to meet the requirements of the Richardson Bay Special Area Plan, and would have to be brought into compliance with County building code requirements. In exchange for this agreement, Gates agreed to assist WPH in removing unpermitted fill from the harbor. Further, an area in the vicinity of the harbor known as the "Railroad Property," owned by the Ecumenical Association for Housing, would be made available for parking for Gates Cooperative tenants. Implementation of the settlement agreement, including the processing of permit applications, was supposed to be complete by July 1, 1995.

**Implementation of the Settlement Agreement.** One of the major accomplishments in implementing the settlement agreement involved the removal of excess fill and dilapidated houseboats from the harbor. There are now only 38 Gates houseboats in the harbor. Additionally, money has been allocated by the Ecumenical Association for Housing to bring the remaining houseboats into compliance with county building codes. WPH also filed an application with the County for a master plan amendment, as required by the settlement. Nonetheless, delays in processing this plan for the harbor were incurred as a result of several factors, including prolonged discussions with the Army Corps of Engineers about the extent of its permit jurisdiction in the area. Further studies were also necessary before it could be concluded that toxic contamination found in the harbor did not pose a threat to human health. As a result, the settlement had to be extended several times. The settlement is currently scheduled to expire in May 2004.

**Requirements of the Settlement Agreement.** The Settlement Agreement requires WPH to apply for and obtain a BCDC permit and to implement the requirements. The most significant requirements are to: (1) effect a land exchange with the State Lands Commission to obtain title to underwater property, subject to the public trust, so that all the houseboats and other harbor facilities would be located on private lands. (WPH and State Lands are working on the exchange, which will be concluded after BCDC acts on this permit application.); (2) remove all unauthorized houseboats and other unauthorized fill from the harbor within six months of the BCDC approval

of the project; (3) pay a \$200,000 civil penalty for the unauthorized houseboats. (WPH has complied with this requirement.); and (4) submit with the application several items including a description of all uses proposed at the harbor, a proposal for ensuring continued maintenance at the harbor, and a proposed amendment to the Richardson Bay Special Area Plan if the harbor proposes any fill into areas designated for open water. (With a few exceptions, the application complies with these requirements. The major exceptions are the failure to provide a harbor maintenance plan and propose an amendment to the Special Area Plan if fill for non-trust uses would be placed in land conveyed to the state. Rather than submitting a maintenance plan in advance, WPH anticipates that it will have to submit it once a project is approved. Second, the land exchange would be different than previously contemplated so that no fill for residences will be located within land conveyed to the state and, therefore, no amendment to the Special Area Plan would be needed.)

**Settlement Procedures.** If the Commission approves the project, the parties to the settlement agreement may adjust the terms of the Settlement Agreement to make it consistent with the approval. To resolve the litigation issues, the Settlement Agreement provides that the parties would seek Court approval of an amended agreement and have a judgment entered that would be conclusive as to all matters set forth in the judgment. If BCDC denies a permit, or the conditions of the permit are not satisfied, the Settlement Agreement provides that it shall have no further force and effect and the parties may pursue litigation to resolve the issues.

**Processing of WPH's Master Plan Application.** In 1997, a draft EIR (DEIR) for WPH's master plan amendment was prepared. Unfortunately, the DEIR identified several purportedly significant effects that would result from WPH's proposed development. In general, these effects related to the proposal to extend "B," "D," and "E" Docks into Richardson Bay. The DEIR indicated that this portion of the plan would have two undesirable effects. First, it was thought that extending the docks into the Bay would expose the houseboats at the ends of the docks to greater risks resulting from increased exposure to storm wave action. Second, it was suggested that extending the docks into the Bay would have adverse impact on views, particularly views of the harbor from Strawberry Point.

BCDC objected to both these conclusions. In particular, it was noted that there was insufficient documentation to support the conclusion that houseboats at the end of the docks would be subject to increased wave action during storms. BCDC also indicated that the DEIR had not addressed several key issues. For instance, the DEIR only focused on the environmental effects that would arise as a result of the proposed changes in the marina. It was noted that a new BCDC permit for the whole marina would be necessary and therefore it was recommended that the DEIR should be expanded to consider the impacts of permitting the marina to continue to be used for the berthing of houseboats for an additional 20 years. BCDC and the State Lands Commission also indicated that the DEIR must consider whether continued private residential use of the marina should be permitted or whether the marina should be committed to uses that are consistent with Public Trust uses, such as recreation, fishing or navigation.

**Alternative Proposals to Change the Marina.** Partly in response to the issues posed in the DEIR, representatives from the Gates Cooperative approached WPH in late 1997 with an alternative plan that would eradicate the necessity for the dock extensions into Richardson Bay. Under this alternative, most of the houseboats belonging to Gates members would be berthed at "A" Dock and "C" Dock, the two shorter docks at the harbor, and at various areas of the shoreline near the entrances to the other docks. This proposal was acceptable to WPH and the staffs at BCDC and the State Lands Commission because they believed that it was consistent with the goals of the original settlement. This plan preserved the open water area in the center of the harbor and had a minimal impact on views. It also addressed the only significant adverse impacts identified in the DEIR. WPH prepared an amendment to its master plan application incorporating these changes.

This amended proposal did not go forward, however, because of resistance by a number of WPH tenants and the reluctance of the County to proceed. In January 1999, an the Community Development Plan (CDP) was suggested by these tenants as their preferred Master Development Plan. The plan proposes to locate the vast majority of the Gates houseboats at a new dock in the center of the harbor.

Historically, the BCDC and State Lands Commission staffs objected to plans for a new dock for Gates houseboats at the harbor for a variety of reasons. For instance, placement of a new dock in the middle of the harbor detracted the open water and visual access requirements of the original 1971 BCDC permit. BCDC also had indicated that construction of a new, separate dock for Gates houseboats would raise concerns with *Bay Plan* policies that limit the provision of new berths for houseboats to minor additions to existing marinas. More significantly, the placement of a new dock in this location would require a substantial modification to the land exchange agreement and would diminish the amount of open water area near the shoreline that would be provided to the State. It would also detract from the Bay views from and physical access to the longest part of the shoreline devoted to public access through the harbor. The State Lands Commission staff indicated that any new proposal to change the settlement agreement would be acceptable only if the resulting land exchange provided an additional benefit to the public.

In response to the BCDC and the State Lands Commission staffs' comments, the CDP was modified to minimize the size of the proposed dock. Additionally, new public access features were added, including a public access pier and a proposal to contribute \$100,000 toward providing public access at Dunphy Park.

On February 25, 2003, the County authorized a Master Development Plan that includes a new dock for 38 of the Gates houseboats in the previously required open-water area at the harbor's center. On December 22, 2003, WPH completed its BCDC application.

### Project Description

**Project  
Details:**

The application describes the project as follows:

**In the Bay:**

- a. Use and maintain five docks with 234 berths totaling approximately 25,280 square feet of pile-supported fill and approximately 249,547 square feet of floating fill for 231 houseboats located on "A" Dock, "B" (Issaquah) Dock, "C" (Main) Dock, "D" (Liberty) Dock, and "E" (South Forty) Dock;
- b. Construct, use and maintain a 910-square-foot, pile-supported pier for use as a construction platform and then as public access extending from the shoreline park;
- c. Construct, use and maintain, at the belvedere between "D" and "E" Docks, a 530-square-foot, pile-supported pier with an observation deck for public access and one berth;
- d. Construct, use, and maintain an 825-square-foot, pile-supported extension to "C" Dock to create 4 new berths;
- e. Construct, use and maintain, between the proposed park and "C" Dock, a 2,160-square-foot, floating dock with 24 berths and 1,500 square feet of floating fill for associated ramps and floats;
- f. Construct, use and maintain, at the foot of "B" Dock, a 520-square-foot, floating dock with 4 berths and 400 square feet of floating fill for associated ramps and floats;
- g. Construct, use and maintain, at the foot of "A" Dock, 150 square feet of floating ramps for 3 proposed berths;

- h. Continue use of 21,547 square feet of pile-supported fill for 9 arks;
- i. Moor, use and maintain 3,400 square feet of floating fill for 4 houseboats to replace arks that burned or were torn down after 1971;
- j. Remove 1,035 square feet of unauthorized fill from the Appleton Ark (Ark #3) leaving a 3,814-square-foot structure (included in the total square footage for arks in "h" above);
- k. Use and maintain 45,900 square feet of solid fill to improve shoreline appearance and provide public access;
- l. Create a usable public shoreline and park by installing a quay wall from the west side of the Appleton Ark to the existing quay wall south of Dock B;
- m. Install 2,016 square feet (112.5 cubic yards) of solid fill behind the new quay wall to raise the new public shoreline to 7 feet above Mean Sea Level;
- n. Remove all abandoned and unusable fill within the harbor including the old Gates Dock, utilities, any houseboats failing to satisfy County codes, and sunken debris; and
- o. Protect 2,652 square feet of pickleweed located in patches throughout the harbor and create an additional 2,703 square feet of pickleweed in an area proposed as public access west of the Appleton Ark;
- p. Moor, use and maintain a 7,245-square-foot, floating harbor maintenance area including a barge, a pile driver, and various floating debris on A Dock (included in the application under the total amount of floating fill for houseboats).

**Within the 100-foot shoreline band:**

- a. Construct improvements, maintain, and use 22,810 square feet of 8 to 10-foot-wide paths throughout the entire harbor for public access;
- b. Place fill to raise an approximately 111,000-square-foot area to 7 feet above Mean Sea Level for use as a public park and parking lot and grade, use and maintain this area;
- c. Construct, use, and maintain 30,465 square feet of public park between "B" Dock and the Gates Dock including; (1) 7,411 square feet of 8 to 10-foot-wide, paved shoreline path that connects to the existing path below "B" Dock and to the path near "C" Dock; (2) 3,116 square feet of informal, all-weather paths; (3) 19,938 square feet of landscaping; (4) views to the park from Bridgeway; and (5) benches, trash receptacles, bollards and railings;
- d. Construct, use and maintain a paved parking lot including 10 public parking spaces and 106 private parking spaces;
- e. Relocate trash bins for each dock to the upland side of the shoreline path;
- f. Remodel, use and maintain the Harbor Master's Office to include updated offices and a new harbor maintenance area in the basement; and
- g. Install, use and maintain 23,217 square feet of landscaping throughout the harbor (excluding the park);

**Site:** Waldo Point Harbor is an approximately 245-berth houseboat marina located in an unincorporated area of Marin County, near the City of Sausalito on Gate 5 Road. On the northwest border of Waldo Point Harbor (WPH) are Yellow Ferry and Kappas houseboat marinas. WPH includes five organized docks, where houseboats are in designated berths, and one dock where houseboats have settled in any available location over time (known collectively as the Gates Co-op). An eight-foot-wide public path extends along most of the shoreline, except in the area near the Gates Co-op (Exhibits A, B, & C).

**Project:** On May 20, 1971, the Commission approved Permit No. 5-71, which authorized houseboats, docks and associated facilities at Waldo Point Harbor for a period of 20 years. The amended permit expired in 1992 and, as allowed in the settlement agreement, the harbor has operated without a Commission permit since that time. The applicant is seeking authorization of the portion of Waldo Point Harbor authorized in expired BCDC Permit No. 5-71 as well as authorization for additions to the harbor.

BCDC Permit No. 5-71 authorized the following: (1) 245 houseboat moorings, which included 13 arks; (2) 25,280 square feet of pile-supported fill for five docks; (3) 1.1 acres (47,918 square feet) of solid fill to improve shoreline appearance and public access; (4) an 8-foot-wide shoreline path throughout the harbor and a public park; and (5) parking, road, and building upgrades to improve appearance in the shoreline band.

The amount of fill for the 245 houseboats authorized in Permit No. 5-71 was not specified in the permit. Permit No. 5-71 did not limit the size of houseboats at the harbor, only the number and the draft. The applicant estimates the fill for previously authorized houseboats to be approximately 275,000 square feet. The applicant's calculation assumes each houseboat, gangway and any personal boat docks can occupy the maximum square footage per berth that would be consistent with County codes for setbacks and height.

The authorized houseboat project was not completed and portions of the project that currently exist include: (1) 231 houseboats; (2) 9 arks; (3) a floating harbor maintenance area; (4) 25,280 square feet of pile-supported fill for 5 docks; (5) 45,900 square feet of solid fill to improve shoreline appearance and public access; (6) an 8-foot-wide shoreline path through the harbor, except through the Gates Co-op area; and (7) various harbor facilities, such as utilities and parking. Also existing, but not authorized, are 38 Gates Co-op houseboats and associated facilities as well as an approximately 7,040-square-foot harbor maintenance area.

The additions proposed in this application include: (1) 38 Gates Co-op houseboats (after-the-fact); (2) four "ark replacement" berths; (3) an approximately 360-foot-long, floating dock; (3) approximately 4,730 square feet of additional floating docks, ramps and floats to accommodate Gates Co-op houseboats; (4) approximately 1,440 square feet of pile-supported fill for two public access piers; (5) approximately 825 square feet of pile-supported fill on "C" Dock to create 4 Gates houseboat berths; (6) on-site public access improvements; (7) portions of a new parking lot; (8) solid fill to raise the public access park to seven feet above Mean Sea Level; (9) a remodel of the Harbor Master's office including a new harbor maintenance area in the basement level; and (10) an approximately 7,040-square-foot, floating harbor maintenance area (after-the-fact)(Exhibit H).

**Fill:** The applicant proposes reauthorization of old fill authorized under expired BCDC Permit No. 5-71 and new fill. Based on the assumptions described above, the old fill totals approximately 347,163 square feet (7.9 acres) (the application proposes 348,198 square feet, but proposes to remove 1,035 square feet from the Appleton Ark) and includes: (1) 25,280 square feet of pile-supported houseboat docks; (2) approximately 47,916 square feet (1.1 acres) of solid fill for public access; and (3) 245 residences (approximately 252,418 square feet for houseboats and 21,547 square feet for arks [6.2 acres total]). The proposed new fill totals 26,281 square feet and includes: (1) approximately 19,286 square feet of floating fill for 38 Gates houseboats; (2) 1,440 square feet of pile-supported fill for two public piers; (3) 825 square feet of pile-supported fill to extend “C” Dock to accommodate four Gates houseboats; (4) 2,160 square feet of floating fill for the Gates Dock, which will accommodate 24 houseboats; and (5) 3,660 square feet of floating fill for various docks ramps and floats. The total amount of old and new fill would be approximately 374,479 square feet (8.6 acres).

**Public Access:** The public access proposal includes 79,209 square feet of public access park, paths, landscaping, and amenities. The applicant also proposes a 5,355-square-foot area of wetland restoration and mitigation as a contribution to public access. Like the numbers for the fill, the public access can also be divided into old and new public access. However, because much of the public access authorized in the expired permit was never installed, the public access is presented as one proposal for the entire project. The proposal includes the following elements: (1) a 31,444-square-foot park with a paved shoreline path, a public pier, landscaping, and informal paths; (2) 22,810 square feet of 8 to 10-foot-wide, shoreline paths outside of the park; (3) 23,217 square feet of landscaping outside of the park; (4) 1,738 square feet for 10 public parking spaces; and (6) 5,355 square feet of wetland area (Exhibits D, E & F).

**Public Benefits Package:** The applicant would offer the following public benefits subject to Commission approval of the project:

1. The applicant states that: “[t]he settlement agreement is premised upon completion of a land swap that is to be completed with the State Lands Commission...an appraisal was prepared in February, 2002 by Arthur Gimmy International that shows the land swap would result in a net gain to the State of California of \$539,000” (based on the applicant’s appraisal). This “gift” is one part of WPH’s intended mitigation. The applicant does not specify which project impact the mitigation is intended to offset (Exhibit G).
2. The applicant recently proposed to include two additional, off-site parcels in the land swap that it states are worth approximately \$136,917 (based on the applicant’s appraisal) and proposes the inclusion of the two parcels as mitigation for new Bay fill.
3. The applicant further states that, “[t]he project sponsor continues to ‘voluntarily’ remove derelict boats and debris from the harbor that has been on site for many years and placed by previous land owners...WPH has documentation to demonstrate that the harbor has removed over 58,000 square feet of said debris, including over 30 abandoned houseboats, since the litigation settlement agreement was signed...this work has cost the harbor over \$1,000,000...this voluntary action has substantially benefited the Public Trust by providing open water where non previously existed for over 50 years.” The applicant did not provide documentation regarding the cost of removal or the claim that the debris existed for over 50 years; and



4. Finally, the applicant states that “WPH has agreed to make a substantial financial contribution (\$100,000) to securing \$400,000 worth of land for an off-site shoreline park expansion at Dunphy Park, [in Sausalito]. This voluntary ‘gift’ offer permitted the County of Marin and the City of Sausalito to secure bayfront parkland that might otherwise have been lost or increased in cost over time.”

**Priority**

**Use Area:** The project is not located in a Bay Plan-designated priority use area.

**Schedule**

**And Costs:** The applicant proposes to begin construction of the project as soon as all permits have been obtained. The total estimated project cost is \$1 million.

### Staff Analysis

A. **Issues Raised:** The staff believes that the application raises six primary issues: (1) whether the proposed fill is consistent with the McAteer-Petris Act and Bay Plan policies regarding fill in the Bay; (2) whether the project would provide maximum feasible public access, consistent with the project; (3) whether the project is consistent with the *Bay Plan* policies on houseboats; (4) whether the project is consistent with the *Richardson Bay Special Area Plan*; (5) whether the project is consistent with the *Bay Plan* policies on mitigation; and (6) whether the project is consistent with the Public Trust.

1. **Bay Fill.** Section 66605 of the McAteer-Petris Act states, in part, that: (a) fill in the Bay can be authorized only when public benefits of the fill exceed the public detriment from the loss of water areas; (b) the fill must be limited to water-oriented uses (such as water-related recreation), or minor fill for improving shoreline appearance or for public access; (c) fill can be authorized only when no alternative upland location exists for such purposes; (d) the water area authorized to be filled should be the minimum necessary to achieve the purpose of the fill; and (e) the nature, location and extent of any fill should be such that it will minimize harmful effects to the Bay Area, such as, the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment, as defined in Section 21060.5 of the Public Resources Code....” Section 21060.5 of the Public Resources Code defines environment as “the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.”

In 1986, the Commission enacted *Bay Plan* policies that define and make more specific the applicability of Section 66605(a) to the re-authorization of existing houseboat marinas. A discussion of the specific criteria is examined further in the sections below on the *San Francisco Bay Plan* houseboat policies and the *Richardson Bay Special Area Plan*. In summary, the *Bay Plan* policies allow the continued authorization and minor expansion of an existing houseboat marina with certain restrictions that address the Public Trust needs and that limit the future expansion of the non-water oriented, residential use. Additionally, the staff believes that the project should be consistent with the specific criteria of Section 66605 of the McAteer-Petris Act.

The applicant proposes reauthorization of old fill authorized under expired BCDC Permit No. 5-71 and new fill. Based on the assumptions described above, the old fill totals approximately 347,163 square feet (7.9 acres) and includes: (1) 25,280 square feet of pile-supported houseboat docks; (2) approximately 47,916 square feet (1.1 acres) of solid fill for public access; and (3) 244 residences (approximately 252,418 square feet for 231 houseboats, approximately 21,547 square feet for 9 arks [6.2 acres total], approximately 3400 square feet for ark replacement berths, and approximately 7,040 square feet for a harbor maintenance area). The new fill totals 26,281 square feet and includes: (1)

approximately 19,286 square feet of floating fill for 38 Gates houseboats; (2) 1,440 square feet of pile-supported fill for two public piers; (3) 825 square feet of pile-supported fill to extend "C" Dock to accommodate four Gates houseboats; (4) 2,160 square feet of floating fill for the Gates Dock, which will accommodate 24 houseboats; and (5) 3,660 square feet of floating fill for various docks ramps and floats. The total amount of old and new fill would be approximately 374,479 square feet (8.6 acres).

- a. **Public Benefits v. Public Detriment.** BCDC Permit No. 5-71 authorized 245 houseboats and arks, five docks, fill for public access, and associated harbor facilities. The permit application provided the County and BCDC with the best opportunity they had to ensure the provision of sewage connections and other services to scores of existing houseboats and remedy a number of public safety problems, fire protection deficiencies, and building code violations. The Commission recognized additional public benefits associated with the project. As a result of the permit approval, the collection of houseboats, floating docks, and ramps were organized to cover less surface area of the Bay and greatly improve shoreline appearance. Sunken hulls and other debris were removed, which further improved shoreline appearance. Solid fill was approved for public access along the shoreline and public open space was required. The public detriments of the project were the lost opportunities to exercise Public Trust uses that may otherwise have existed for the 20-year duration of the permit. Some of those Public Trust uses include environmental preservation and preservation of open space, recreation, fishing and navigation. Although organizing the houseboats on docks reduced the area occupied by the community and created open fairways, there was a significant loss of open-water area. It appears that the Commission determined the resulting improvements in water quality, shoreline appearance and public access as well as the need to allow people to retain their homes resulted in a greater public benefit than the detriments from the loss of water area and associated public opportunities.

The Commission is again placed in the difficult position of authorizing residential uses in the Bay by reviewing the 245 houseboat marina, plus the addition of an after-the-fact request for 38 new houseboats and associated facilities, a denial of which would result in displacing houseboat residents. The current proposal includes the 38 Gates houseboats that settled without Commission authorization in addition to the 245 houseboats and arks authorized in expired Permit No. 5-71. Currently, Gates occupies an unnecessarily large area of Bay because houseboats are moored in random fashion. Debris and sunken hulls litter the Gates area. Finally, Gates is located in the area that was required in Permit No. 5-71 for public open-space, a public access path, and an open-water area. Some of the public benefits of the fill associated with the new Gates dock would be the resulting organization of Gates houseboats, the relocation of Gates outside of the open-space and open-water areas, and removal of sunken or abandoned hulls and debris. Furthermore, Gates is a low-income community that would qualify for public assistance as a result of Commission authorization. The public assistance would enable Gates residents to upgrade their houseboats to meet County building codes. This low-income feature of the project is required by the County permit.

The staff believes that the Commission should keep in mind the following issues in considering the benefits of this project. First, the McAteer-Petris Act requires that "the public benefits of any proposed fill must *clearly exceed* the public detriments of the loss of water area (emphasis added)." Second, the Commission typically requires, under the law and the *Bay Plan* Policies on Fill and Mitigation, that applicants proposing significant Bay fill mitigate the adverse impacts of the fill. Third, applicants must provide the maximum feasible public access, consistent with the proposed project. Finally, the staff believes that the Commission, in approving fill in the Bay, must find that the fill is consistent with the Public Trust and with the *Bay Plan* houseboat policies, which require a finding that such approval is not inconsistent with the Public

Trust needs for the area. The staff believes that each of these specific criteria must be met by this application. The applicant proposes a “public benefits package” rather than mitigation for specific adverse impacts. In this and subsequent sections the staff will attempt to address each specific public benefit proposal and apply it to a specific adverse impact from the project.

The applicant states that it is offering the following specific public benefits:

1. “The settlement agreement is premised upon completion of a land swap that is to be completed with the State Lands Commission...an appraisal was prepared in February, 2002 by Arthur Gimmy International that shows the land swap would result in a net gain to the State of California of \$539,000” (based on the applicant’s appraisal). This “gift” is one part of WPH’s intended mitigation. The applicant does not specify which project impact the mitigation is intended to offset (Exhibit G).
2. The applicant recently proposed to include two additional, off-site parcels in the land swap that it states are worth approximately \$136,917 (based on the applicant’s appraisal) and proposes the inclusion of the two parcels as mitigation for new Bay fill.
3. The applicant further states that, “[t]he project sponsor continues to ‘voluntarily’ remove derelict boats and debris from the harbor that has been on site for many years and placed by previous land owners...WPH has documentation to demonstrate that the harbor has removed over 58,000 square feet of said debris, including over 30 abandoned houseboats, since the litigation settlement agreement was signed...this work has cost the harbor over \$1,000,000...this voluntary action has substantially benefited the Public Trust by providing open water where non previously existed for over 50 years.” The applicant did not provide documentation regarding the cost of removal or the claim that the debris existed for over 50 years; and
4. “WPH has agreed to make a substantial financial contribution (\$100,000) to securing \$400,000 worth of land for an off-site shoreline park expansion at Dunphy Park [in Sausalito]. This voluntary ‘gift’ offer permitted the County of Marin and the City of Sausalito to secure bay front parkland that might otherwise have been lost or increased in cost over time.”

In reviewing those proposed public benefits, the staff believes that the Commission should evaluate the following:

1. With regards to the land swap that the applicant states would provide a net gain in value of \$539,000 to the state, The exchange of land between WPH and the State Lands Commission (SLC) is required in the settlement agreement to address Public Trust issues. First, it is critical that WPH obtain ownership of state-owned lands because private residences are occupying these state-owned tidelands in contravention of the Public Trust. The land swap would result in a large benefit to WPH because, without a land swap, WPH could not obtain approval for the existing marina or for an expansion. Second, pursuant to state law, the SLC may only approve a land swap if it results in a net benefit to the state. The SLC previously found that an earlier version of the land exchange provided the state with a financial gain. It will have to reassess whether the reconfigured exchange also will provide a net benefit. While the SLC staff believes the currently proposed exchange would result in a net benefit to the state, the SLC makes an independent appraisal and final decision but does not “credit” the applicant with a dollar value. Further, the SLC staff does not agree that private land conveyed to the state could serve as “mitigation.” Third, the land swap does not necessarily result in permanent open water areas as the applicant states. Tidelands under state

ownership could be filled for water-oriented, trust purposes. Finally, the applicant offers what it believes is a net gain to the state as mitigation, but does not specify the impact that would be mitigated.

2. Regarding the applicant's second offer of two parcels valued at approximately \$136,917, WPH agreed to give these parcels to the state in the original land exchange, but the parcels were withdrawn and then added again in December 2003 as a proposal to mitigate for the approximately 26,281 square feet of new fill in the Bay. Like the mitigation offer above, placing lands in state ownership does not necessarily protect them from development for water-oriented purposes. Acceptable mitigation proposals for Bay fill generally include removal of fill from the project site or nearby. This would be in addition to unauthorized fill that already must be removed to satisfy the terms of the settlement agreement. This mitigation offer is discussed in the section below on mitigation. In an effort to associate each "public benefits" offer with an adverse impact that the offer would most likely offset, this offer is discussed in further detail in the Public Trust section.
3. WPH has removed excess Gates structures, many of which were foisted upon the harbor and were unauthorized by the Commission. Consistent with Permit No. 5-71, the settlement agreement requires WPH to remove debris from the harbor that was not authorized by the Commission. Since the debris was not authorized by the previous permit and has not been authorized since, it would not be allowed to remain in any case. The staff believes that the removal of any debris that predates BCDC is, however, a clear public benefit. The applicant did not provide an estimate of the square footage or location of pre-BCDC debris that has been removed. The staff believes that removal of pre-BCDC fill could be considered as a part of a proposal to mitigate for new fill.
4. Regarding the applicant's offer to provide \$100,000 toward the expansion of Dunphy Park, the staff believes this public benefit of the project should be acknowledged. However, the Commission should consider whether it is a public benefit that exceeds what would otherwise be required for maximum feasible public access. The staff worked to facilitate the purchase of property adjacent to Dunphy Park along with representatives from the City of Sausalito with the intention of providing an opportunity for WPH to meet the law's requirement for maximum feasible public access consistent with the project. Further discussion of the proposal is included in the public access section.

The public detriments of the project include the lost opportunities to exercise Public Trust uses, such as operating small water craft like kayaks or cleaning up contaminated sediments and restoring tidal flats for preservation as habitat and open space (see also the Public Trust Needs Assessment below). The project also results in a loss of open-water views, but does provide viewing opportunities in some areas.

The Commission should determine whether the public benefits of the fill exceed the public detriment from the loss of water areas.

- b. **Use.** The fill would be used for three purposes: (1) for private residential structures and associated facilities; (2) to improve public access; and (3) to improve shoreline appearance. Section 66605 of the McAtteer-Petris Act provides: "(a) That further filling of San Francisco Bay...should be limited to water-oriented uses (such as ports, water-related industry...water-oriented recreation, and public assembly...) or for minor fill for improving shoreline appearance or public access to the bay...." In general, the Commission would not authorize Bay fill for new, private residential uses because residences are not primarily water-oriented. Therefore, this houseboat marina project must be authorized as minor fill for improving shoreline appearance or public access to the Bay.

As noted above, the Commission enacted Bay Plan policies in 1986 that define and make more specific the applicability of Section 66605 to the re-authorization of existing houseboat marinas. The *San Francisco Bay Plan* houseboat policies and the *Richardson Bay Special Area Plan* policies on floating residential structures contain specific criteria for expansions of existing houseboat marinas. In summary, the *Bay Plan* policies allow the continued authorization and minor expansion of an existing houseboat marina with certain restrictions that address the Public Trust needs and that limit the future expansion of the non-water oriented, residential use.

Commission Regulation Sections 10700 and 10701 also guide the approval of minor fill for improved shoreline appearance and public access. The staff believes that those sections, however, should not apply to the Commission's evaluation of this houseboat marina project. First, by crafting specific policies tailored to reauthorization of a houseboat marina, the Commission has made its determination of how Section 66605 shall be applied in this case. Second, application of the regulation might or might not contradict the specific houseboat policies; the staff believes that the Commission should rely on its specific established principles that determine when fill for a houseboat marina project may be authorized as minor fill to improve shoreline appearance and public access.

Before the Commission's 1971 authorization, WPH was littered with dilapidated houseboats, debris was scattered on the shoreline and in the Bay, and the houseboats were in random locations resulting in coverage of an unnecessarily large area of water. If constructed as approved by the Commission, the project would have improved shoreline appearance and public access. Much of the project debris was removed, disintegrating houseboats were removed, houseboats were connected to upland sewage treatment facilities, pile-supported docks were constructed allowing for fairways and view corridors from the shoreline, and portions of the public access were installed. Consequently, the facilities were authorized as fill to improve shoreline appearance and public access.

The situation with the Gates Cooperative community houseboats today is similar. Many of the boats are in a state of disrepair. They are tied to a floating dock in a random and chaotic fashion, occupying an unnecessarily large area of the Bay. The new fill for the project is intended to improve the appearance of this part of the shoreline and would improve public opportunities in the anticipated public park area. The issue of fill for improving shoreline appearance and public access within an existing houseboat marina is addressed further in the section below on the *San Francisco Bay Plan* houseboat policies.

- c. **Alternative Upland Location.** The majority of both the old and new fill would allow for the continued use of the area for residences and related facilities. As described in the background section above, it has taken many years and many compromises to develop a plan that accommodates the Gates Co-op, satisfies the majority of the WPH community, and complies with County ordinances. After several versions of the plan were reviewed by and objected to by the WPH community, they took it upon themselves to develop a plan that would satisfy them as well as the majority of stakeholders. The BCDC staff actively participated in the CEQA process, submitting comments for every CEQA document. From the project's conception, the BCDC staff pointed out the difficulties of authorizing fill for private residences, the importance of planning for the minimum fill necessary, the need to minimize environmental impacts from the fill, the issues with locating a new houseboat dock in an open-water area adjacent to an anticipated public park, and other conflicts with laws and policies. Some of the staff's comments and suggestions were implemented and some were not.

Housing does not generally require to be located on the Bay and the Commission would generally deny fill for housing in tidal areas. However, recognizing again the history of this marina and *San Francisco Bay Plan* houseboat policies, the Commission must consider the feasibility of relocating the houseboats upland. The applicant states that the hulls of houseboats are not constructed to sit on dry land and would fail. The residences may not satisfy building codes for upland structures. Without the houseboat marina, 280 residences would have to be vacated and many more residents would be required to find new housing. The new fill for Gates houseboats and related facilities is specifically for low-income housing and those residents might have a particularly difficult time finding affordable upland housing in the Bay Area.

The Commission has addressed the question of authorizing houseboat marinas in the *San Francisco Bay Plan* houseboat policies. See below for a discussion of this issue.

- d. **Minimum Necessary Fill.** The proposal includes 347,163 square feet (7.9 acres) of old fill authorized under expired BCDC Permit No. 5-71 and 26,281 square feet of new fill. It is apparent from photographs of the harbor taken prior to the Commission's 1971 authorization that the random location of houseboats and debris occupied a larger portion of the Bay than the resulting 5 docks and 245 berths. The County approval of the project ensures that the footprint for each houseboat would not extend beyond County setbacks and that fairways are maintained between docks so that houseboats can be reached in an emergency. The docks, which are used by both houseboat residents and members of the public, are generally 8 to 10 feet wide, which is the width commonly used for public paths. The new portion of the fill would involve reorganizing the Gates Co-op in a similar fashion to comply with County codes and consequently occupying a smaller water area than at present.
- e. **Minimizing Impacts.** The Environmental Impact Report evaluated the environmental impacts of the current proposal and several alternatives, including two "no project" alternatives: one that involved removal of all houseboats from the marina and leaving the docks in place; and another that involved no changes to the marina. The EIR established the Community Development Plan (the plan contained in the current BCDC permit application) as the environmentally superior plan. The EIR recognizes that the no project alternatives of leaving the marina "as is" would be the environmentally superior project, but would not comply with state and County laws, nor would it comply with the terms of the settlement agreement. The EIR concludes that the "no project" alternative involving removal of all houseboats would result in greater environmental impacts due to resulting disturbance of the contaminated sediments in the harbor and displacement of all the houseboat residents. Both no project alternatives would be inconsistent with the County's requirements that the project provides low-income housing and that such housing complies with County building codes.
  - (1) **Sediment Contamination.** Other than displacement of houseboat residents, the contaminated sediments in the harbor present the greatest constraints on project design. Sediment samples and bivalves were taken from the project area to determine contamination levels. The sediments in the outlying areas of the harbor contained contaminant levels similar to those in the greater Richardson Bay. Generally, the contamination testing indicated the presence of concentrations of chlordanes, DDTs, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), copper, mercury, lead, zinc, and total organic carbon. The contaminant levels increased closer to the shoreline. In the Gates Co-op area, sediments were found to contain PAHs and PCBs at levels comparable to three of the most contaminated industrial sites in the estuary: Castro Cove (historic outfall of Chevron Oil's refinery in Richmond), Islais Creek (site of the San Francisco Southeast combined sewer overflow), and Mormon Channel (located in the middle of the Port of Stockton).

The project is designed to minimize disturbance of these contaminated sediments, which would have a greater impact than any impacts to benthic communities resulting from shading and the weight of houseboats on the mud. This latter impact was determined to be insignificant. All work in tidal areas would take place during the lowest tides to minimize turbidity. Additionally, silt screens would be used to prevent any disturbed contaminated sediments from reaching tidal waters. It should also be noted that the contaminant levels and the nature of the contaminants would not necessarily prohibit clean up of those Bay muds. According to the applicant, clean up of the contaminants would, however, be cost prohibitive at this time.

- (2) **Visual Impacts.** The EIR concludes that the project would improve current views to the Bay by cleaning up and organizing the Gates area. The BCDC staff submitted comments indicating that the location of the proposed Gates dock in an open-water area would impede views to the Bay from the public park and shoreline paths and stating that an alternative with fewer visual impacts would be to first find space on existing docks for the 38 Gates houseboats, even if one or more of the docks would need to be extended. Then, if a new dock was still needed, WPH could build a smaller dock that would have fewer visual impacts. This suggestion was not favored by the County. The applicant has, however, proposed new public viewing areas and a public pier at the park to provide views to the Bay. The Commission should determine whether the resulting fill would minimize visual impacts.
- (3) **Volume, Surface Area or Circulation of Water and Water Quality.** The greatest potential impacts to water quality other than disturbing contaminated sediments is the impact from sewage and non-point source runoff. Regarding sewage disposal, all houseboats would be or already are connected to upland sewage treatment facilities. The sewage connections at the Gates Co-op would be updated and would run along the new dock. Non-point source pollution could result from additional paving for parking lots. The project is designed with landscaping between parking lots and the shoreline so that runoff is captured in the landscaping and held behind the existing and proposed quay walls.

The EIR addresses the issue of loss of water volume, surface area and circulation in the context of the existing conditions at the harbor and the organization and cleanup that would result from the current proposal. Generally, the impact associated with loss of surface area of the Bay is shading of water areas below the fill. Impacts related to loss of water volume, in this case, would result primarily from houseboats sitting on the bottom of the Bay. According to the EIR, the existing harbor facilities that create shade in the Bay include the houseboats, floats ramp, and piers (horizontal elements), and the mooring piles (vertical elements). The existing harbor project has approximately 7.6 acres of fill for houseboats, floats, and ramps, and 0.9 acres of piers for a total of approximately 8.5 acres of existing horizontally-oriented structures creating shade (including unauthorized fill). The proposed addition to the harbor includes approximately 26,000 square feet of fill that would create shading, but would result in more organized dock configuration. Given the existing conditions at the site, including the unauthorized fill, the project would result in a reduction of approximately 1.2 acres of horizontal shading elements, but a net increase of approximately 0.01 acres of vertically oriented structures. Overall, the project would reduce the amount of habitat currently diminished by contact and shading at WPH.

The EIR states that “[w]hile the proposal would result in the movement of some of the Gates Cooperative houseboats to the new WPH docks, the net amount of bottom contact would decrease as well as the net amount of shading. The impact to forage areas, compaction of sediments, and creation of permanently shaded areas, would not be considered significant because of the likelihood that the project would

result in an overall decrease in the amount of bottom contact and shading. The overall impact of the project to the benthic community would likely be positive, as more previously inhabitable substrates would become available as a result of the decrease in bottom contact." The EIR concludes that "project implementation would result in the shading of new, previously unshaded areas, and in the uncovering of previously shaded areas. Overall, the amount of shading and bottom contact would decrease with project implementation, resulting in increased habitable benthic area. This would be considered a less-than-significant impact."

While the EIR contains valuable information, it only evaluates the impacts associated with proposed piers and docks and the resulting improvements to the existing conditions. This is consistent with CEQA requirements. However, the staff believes that, because Gates was never authorized by the Commission, the impacts of locating Gates on the site should be evaluated as well as any improvements associated with relocating the Gates houseboats and facilities as they currently exist. As new fill, Gates would result in coverage of an additional 26,281 square feet of the Bay. Like most of the other 232 houseboats in the marina, most of the Gates houseboats would not float at all stages of the tide. Dredging would be particularly harmful in the area of the proposed Gates Dock where sediment contaminant levels are unusually high. The houseboats would sit on the tidal flats or, on occasions when they float, they would shade subtidal habitat resulting in adverse impacts to 26,281 square feet of tidal flats.

The Commission should determine whether fill would minimize harmful effects to the Bay Area, such as, the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment, as defined in CEQA.

- f. **Mitigation.** The applicant is offering to add two tideland parcels to the land swap with the State Lands Commission as mitigation for proposed fill. A discussion of this offer, the Commission's mitigation policies, and the associated issues is described below in the mitigation section.
- g. **Harbor Maintenance Area.** The applicant seeks authorization for the located on Dock "A", but counts it as one of the 283 houseboats. However, the applicant's response to staff inquiries about the harbor maintenance area indicate that it includes a working boat shop on a 3,500-square-foot, floating barge, a pile-driver for contract work within the marina, and a floating storage area. It appears that there is no residential use of the barge and the uses are floating industrial uses, some of which may be water-oriented.

The applicant asserts that, though the harbor maintenance area was not specifically authorized in Permit No. 5-71, it has been shown on WPH project plans since 1971. The staff agrees that the authorization section clearly does not include a marine services facility on Dock A, nor is there any mention of such a facility in the findings and declarations. In addition, construction plans for Dock "A" that were approved consistent with Permit No. 5-71 do not show a harbor maintenance area. Instead, the plans show three to four houseboat berths in the current location of T.J. Nelson's facilities. The current proposed plan shows a boxed area defining T.J. Nelson's facilities that appears much larger than the area currently covered by these facilities. The plans show a barge that is approximately 3,520 square feet and a "floating equipment area" of the same size for a total of 7,040 square feet. The staff visited the site on several occasions and saw considerable debris stored on the barge. The floating equipment area contains a pile driver that appears to be about half the size of the area delineated on the plans. Harbor maintenance areas are common in marinas throughout the Bay. However, with the exception of the occasional pile driver or dredge, these facilities are located in upland areas rather than on the Bay. The applicant states that "the floating equipment area may, from time to time, include the storage of barges,



piles, and other floating equipment needed for harbor maintenance.” The space outlined on the plans could potentially be occupied by four Gates houseboats. The staff believes that some of the harbor maintenance facilities could be considered water-oriented, but that there should not be any floating storage of equipment or debris. The Commission should determine whether harbor maintenance use is a water-oriented use with no upland location and, if so, whether the area constitutes the minimum fill necessary.

- h. **Appleton Ark.** In discussions with the applicant, the staff noted that portions of the Appleton Ark, a structure currently occupying a 4,849-square-foot footprint over the Bay, were added without Commission authorization. The staff reviewed aerial photos showing several additions to the Appleton Ark from 1968 (100' x 35') to 1999 (120' x 57').

The applicant proposes to reduce the Applicant Ark in width by removing approximately 1,035 square feet from the east side of the structure. It appears that one of the unauthorized additions to the ark is a garage enclosure that opens onto the public access path. The applicant does not propose to remove this portion of the ark.

- i. **Arks.** Existing at the harbor are nine “grounded houseboats” or “arks.” These former houseboats are permanently sitting in the mud or are elevated above the tide on pilings. As with the harbor’s houseboats, the applicant owns the underlying property and the owners of the houseboats and arks are tenants of the marina. The presence of the arks raises two points.

First, BCDC Permit No. 5-71 authorized the renovation of a harbor that contained 13 arks. Since that permit was issued, three of the arks have burned down or have been torn down. Also, the settlement agreement provides that any ark located on land to be conveyed to the state should be offered a “replacement” houseboat berth so that the ark may be removed. One of the arks qualifies under the settlement agreement. The other three arks have been absent from the harbor for many years. Nevertheless, the applicant states that according to legal agreements with those ark owners, the applicant must provide “replacement” berths. Therefore, the application includes 38 new berths for Gates houseboats and four new berths for the replacement of the arks, for a total addition of 42 new houseboats in the harbor, an increase of about 17%. The applicant has provided some written agreements that show that the applicant had some arrangement with at least three owners of the removed arks to replace their ark “berth” with a houseboat berth. The total number of new houseboats must meet the Bay Plan policy that states: “As to marina expansions, the houseboats would be limited in number and would be only a minor addition to the existing number of authorized houseboat berths.

Second, the staff has evidence that the arks predate the Commission’s jurisdiction. Nevertheless, the owner-applicant has included the arks in this current proposal for reauthorization of existing residences and expansion of the harbor. The staff and Commission have received comments from the public asserting that the Commission does not have jurisdiction over the pre-existing arks if they are in the same location and have not physically changed. While the Commission cannot control the existence of a pre-existing structure, it does regulate repairs, maintenance, or proposed changes to the structure that would result in additional Bay fill or create impacts on public access or that would conflict with other Commission policies. Over the years the Commission has permitted repairs to several of the arks, even though the number of berths authorized in the original BCDC permit included the arks. This is within the prerogative of the property owner which, through its leases, can control the residences on its property.

Given all of the information on Bay fill and the staff analysis of the issues, the Commission should determine whether the proposed fill is consistent with Section 66605 of the McAtteer-Petris Act as it relates to the Commission's *Bay Plan* policies on houseboats.

2. **Public Access.** Section 66602 of the McAtteer-Petris Act states, in part, that: "...existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." The San Francisco Bay Plan policies on public access further state that "...maximum feasible public access should be provided in and through every new development in the Bay or on the shoreline...the access should be permanently guaranteed...should be consistent with the physical environment...provide for the public's safety and convenience...and built to encourage diverse Bay related activities and movement to and along the shoreline..." In evaluating a project's proposed public access, the Commission relies on the San Francisco Bay Plan policies to determine whether the project includes maximum feasible public access consistent with the project.

- a. **Maximum Feasible Public Access.** In assessing whether a proposed project would provide the maximum feasible public access consistent with the project, the Commission is guided, in part, by the decisions contained in *Nollan et. al. v. California Coastal Commission* and *Dolan et. al. v. City of Tigard*. In these decisions, the U.S. Supreme Court held that a public agency must show a nexus, or essential connection, between a permit condition requiring the dedication of property or a fee and the public burden created by a private development project. The agency must also demonstrate that the condition is roughly proportional to the burden.

The project involves a total of 282 homes in the Bay, 6 large docks, 3 small docks, a floating harbor maintenance area, an office building, and a parking lot with hundreds of parking spaces. These facilities cover an approximately 8-acre area of the Bay and most of the shoreline within WPH. Without a plan for public access, the physical location of private residences and associated facilities would prevent public access to the Bay.

Without the public access, the reauthorization portion of the project involves 245 residential structures in the Bay, 5 docks, and several hundred parking spaces. Assuming two residents for each residential structure, the project would result in an additional 490 people living on the Bay. The nature of shoreline usage is different for a housing project than it is for an office building. The people residing on the shoreline or in the Bay are typically there for longer periods of time. They are at their homes during their free time and may be more likely to use the shoreline for recreational purposes. In the case of this project, the shoreline would be used for walking, parking, bicycling or other uses. The applicant also points out that the houseboat marinas are tourist attractions and on some weekends attract buses filled with tourists. WPH also employs a harbor master, an office manager, and a maintenance crew. Without public access on site, the large number of people that use the shoreline at the harbor as a result of this project would create a significant burden on public access in the neighboring areas.

Those portions of the project that are proposed as new work include 38 houseboats, one large floating dock, two small docks, a floating harbor maintenance operation, a harbor master's office building with additional space for harbor maintenance materials storage, and a debris removal and construction activity. The new portions of the project would result in approximately 76 additional people living on the Bay and using the shoreline as well as an addition of any employees of the floating harbor maintenance area.

The 282 homes in the Bay, the floating harbor maintenance area, the office building, and the parking lots block some views to the Bay from Bridgeway, which is the nearest public thoroughway and supports a bike lane. Drivers and bicyclists would have no way of knowing they are close to the Bay without a plan designed with view corridors. For those that do know the proximity of the Bay, the viewing opportunities from the shoreline would also be compromised without a project designed to protect open-water views. The large number of structures and current project configuration create a significant burden on public views.

- b. **Public Access Required in BCDC Permit No. 5-71.** The public access required in BCDC Permit No. 5-71 included fill for an 8-foot-wide path within a landscaped corridor along the entire shoreline of WPH, landscaped public open space where grounded houseboats were removed, and significant visual access to an open-water area. The Gates now uses the open-space area, the open-water area, and a portion of the shoreline path area.

Because the permit conditions stipulated that public access plans be submitted and reviewed by the Design Review Board after the permit was issued and, because the permit files are over 30 years old, it is difficult to determine exactly what the original public access open-space proposal included. There are no public access plans in the files that were approved by or on behalf of the Commission. Permit No. 5-71 required that “[T]he fill approved herein [1.1 acres of fill along the shoreline] shall be used only for pedestrian and bicycle pathways, landscaping, open space or play area; the new fill shall not be used for automobile parking, except that minor portions of individual parking spaces may extend on to the new fill when this is necessary for an efficient layout of parking areas on existing land.” The permit further required that “all structures shown in the application for a BCDC permit as a ‘grounded houseboat’ shall either have received [authorization]...from the County of Marin for use as a dwelling or for water-oriented commercial recreation, or shall have been removed and replaced by landscaping or other open public use compatible with the vicinity.” The grounded houseboats included the Charles Van Damme, the Isaaqua, and the C. Russell Smith. (The C. Russell Smith received authorization for use as a dwelling and is now included in the proposal as an “ark replacement berth”.) The applicant and staff disagree about the size of the area that was planned as public open space. The applicant points out that open space would have been available only if grounded houseboats did not receive County authorization for use as residences.

The staff believes that it is clear from the text of the permit that the Commission’s intent was to enhance public use of the shoreline in the significant area occupied by grounded houseboats where such boats did not receive County approval. It is also clear from the line delineating the location of the 1.1 acres of fill that the majority of the open space or would be located on the shoreline between “B” Dock and the Appleton Ark. The open-space location was the only attractive area for a large public space in the harbor. It was adjacent to a large open-water basin offering significant views of the Bay.

The public access authorized in Permit No. 5-71 was never completed. An 8-foot-wide shoreline path with landscaping was installed along most of the shoreline, except in the area south of “B” Dock and west of “C” Dock. Public open space was never completed because the Gates Co-op houseboats settled in the proposed open-space area. Much of the fill for the public path and open space was never installed and the open-water basin was littered with dilapidated boats, catwalks, and debris.

- c. **New Public Access Proposal.** The current public access proposal includes a public park in the same general location as the former open-space area, a partial connection to the portion of shoreline path that was installed pursuant to Permit No. 5-71, and 10 public parking spaces. Although the applicant and staff disagree on the total area that

was planned as a public access open space under Permit No. 5-71, both the staff and applicant agree that the park, as it is now proposed, is larger than what was originally intended. The current public access proposal includes 79,209 square feet of public access park, paths, landscaping, and amenities throughout the harbor with the following details: (1) a 31,444-square-foot park with a paved shoreline path, a public pier, landscaping, and informal paths; (2) 22,810 square feet of 8 to 10-foot-wide, shoreline paths outside of the park, most of which were installed pursuant to Permit No. 5-71; (3) 23,217 square feet of landscaping outside of the park, most of which was installed pursuant to Permit No. 5-71; and (4) 1,738 square feet for 10 public parking spaces. In addition the applicant proposes 5,355 square feet of pickleweed restoration and mitigation as public access.

- d. **Issues.** As noted above, the BCDC staff submitted comments on the project at every opportunity, objecting to the location of the Gates dock in an open water area adjacent to the public park required in BCDC Permit No. 5-71, but never completed. The staff suggested creating space for additional houseboats on existing docks and then, if necessary, building a smaller dock for the remainder of the Gates houseboats. This suggestion was unacceptable to the WPH community. Therefore, when the staff first began discussing the new permit application with the applicant's representative, the staff was very clear about what it believed would be required to satisfy maximum feasible public access consistent with the entire project. The staff raised two issues with the applicant's representatives:
- (1) The public access determined to be the maximum feasible public access consistent with the original project authorized through BCDC Permit No. 5-71 was never completed. The public access plan associated with the expired permit was evaluated in connection with the original project, which included fewer houseboats and docks than the current proposal and did not include an intensification of use of the Harbor Master's office building. The staff requested a larger and better-designed park that would be commensurate with the expansion of WPH; and
  - (2) The staff believes that the value of that entire park area has diminished due to the proximity of the proposed Gates Dock and the lack of open water views that were anticipated in Permit No. 5-71. The staff asked for in-lieu public access to address the diminished value of the entire park area.

In order to address the staff's suggestion for in-lieu public access, WPH acquiesced to contribute \$100,000 toward the purchase of additional land for a public park adjacent to nearby Dunphy Park. The applicant states that this \$100,000 is not in-lieu public access to compensate for any lack of adequate on-site public access. However, the monetary contribution is included under the public access section of its October 16, 2003 application submittal and, as noted above, the staff believes that in-lieu public access is necessary to offset the impacts from the Gates dock and houseboats for this proposal to be the maximum feasible public access consistent with the project.

- (1) **Pickleweed Mitigation Within Public Access Area.** The applicant proposes to include a 5,355-square-foot pickleweed protection and mitigation area as part of the public access area. In response to staff's inquiries for details about a 1995 U.S. Army Corps of Engineer's jurisdictional determination referred to in the EIR, the applicant realized that it had neglected to anticipate and address any Corps' requirements for mitigation. The applicant submitted for the first time revised plans with a mitigation area in the planned shoreline park area on December 15, 2003. The applicant states that the mitigation area is appropriately proposed as public access because it would enhance the public access just as landscaping does. It could provide an educational, interpretive experience for the public.

Prior to this revised submittal, the staff was satisfied that the proposal for on-site and off-site public access was a proposal that the Commission could determine to be the maximum feasible public access consistent with the project. However, the staff believes that the pickleweed mitigation proposal raises several issues related to public access and the *Bay Plan* mitigation policies.

First, Commission should note that the Design Review Board reviewed a park design that did not include a pickleweed mitigation area. The Design Review Board reviewed the proposal with a shoreline path in the area the applicant is now proposing as pickleweed at three separate meetings. The applicant revised the public access proposal after the Board's third review, replacing a portion of the shoreline path within the proposed park with a pickleweed mitigation area. The Board has not had an opportunity to review this change in the public access design. The first meeting was August 11, 2003, where the Board determined that a site visit was necessary to review the public access proposal. The second review took place at the Bay Model on September 24, 2003, after a tour of the project site. The Board determined that there were certain view corridors that were particularly important and should not have boats located where views would be blocked. They also indicated that the park area should have a design that provides visual and physical access into the park from the corner of Bridgeway Boulevard and Gate Six Road. The applicant responded by proposing a revised park design, by relocating some of the houseboats that would block important view corridors, and by proposing a dock extension at one of the important view corridors. The Board reviewed the revised proposal a third time at the Sausalito School District on October 27, 2003. The Board concluded that the revised proposal would sufficiently protect important view corridors and that the park design was sufficient to move forward with the project and go before the Commission.

Second, the Board requested a fourth review of the proposal after any Commission authorization and made the following recommendations: (1) The public access should begin at the intersection of Bridgeway and Gate Six Road and a range of "tools" and details should be used to enhance the entrance to the shoreline. Recommendations included creating a raised crossing in the parking lot near the intersection, creating paving that feels public, and widening the path that leads to the shoreline from the intersection; (2) The access to the park from the intersection must be very clear, and the parking lot should not "water down" a strong axis to the shoreline; (3) Some parking might need to be reconfigured to create an acceptable park design; (4) A design development package should be submitted for the Board's review after Commission approval, but prior to final plan review and construction; and (5) There should be regulatory controls on the harbor with regard to size of boats and slips.

Third, the staff believes that the new proposal with a mitigation area is significantly different than the proposal the DRB reviewed. The addition of the mitigation area has negative impacts on the park design. The Board recommended a strong connection to the shoreline path from other public areas such as Bridgeway. The proposal reviewed by the DRB connected the shoreline path throughout the harbor and connected to Bridgeway in two locations. The new design interrupts the shoreline path creating an abrupt ending and rendering useless once of the connections to Bridgeway. Consequently, the remaining continuous path is located inland near the parking, thereby limiting the usefulness and desirability of the shoreline path that the Board believed to be an important element in the park design. Furthermore, the staff believes that the size of the park is significantly reduced by the mitigation area. The reduction in size leaves very little space to reconfigure parking to create a park design that is ultimately acceptable to the Board. One of the parking lot configurations considered by the Board located

parking between the Appleton Ark and the park because the Board believed that the size and bulk of the Appleton Ark would impose on the park without a buffer. The applicant's proposal included trees and other plantings as a buffer, which were removed under the plan with the pickleweed mitigation area. Finally, Permit No. 5-71 required a continuous path along the shoreline of the entire harbor. The pickleweed mitigation area interrupts the shoreline path diverting the public to an inland path. The applicant maintains that the mitigation area would be part of the park. However, the Commission's "Public Access Design Guidelines" are very specific about the need for public access areas to be designed to be usable by the public. The mitigation location appears to be inconsistent with this guideline. In summary, the staff believes these negative impacts are inconsistent with the Board's recommendations.

Separate from the public access design problems related to the pickleweed mitigation area, the staff has three additional concerns about the proposed pickleweed mitigation area: (1) the mitigation area is proposed in an area with highly contaminated soils; (2) the proposal lacks the relevant details for a complete review by the Commission; and (3) the mitigation must be approved by the U.S. Army Corps of Engineers. Regarding the first concern, the applicant proposes the mitigation in an area where the EIR establishes the level of contaminants in the soil as similar to some of the most contaminated sites in the San Francisco Bay and Delta areas. The applicant states that the contaminant levels make disturbing the sediments infeasible, for example by dredging. On the other hand, the applicant proposes to create new pickleweed in the same contaminated sediments with no evaluation of the degree to which sediments would be disturbed or the adverse impacts of creating new habitat in contaminated sediments. Creating new pickleweed generally requires some grading to ensure that the site is the correct elevation to support pickleweed. Second, the applicant does not have a restoration plan, which would indicate: (1) the feasibility of creating new pickleweed marsh in front of a quay wall in this area; (2) whether reference sites exist for comparisons; (3) whether grading would be required to attain the elevations required for pickleweed mitigation; (4) whether wave effects from the quay wall would damage the mitigation area; (5) expected sedimentation rates in front of the quay wall; and (6) the degree of monitoring required. Third, the applicant has a new jurisdictional determination from the Army Corps of Engineers, but did not submit a permit application to the Corps prior to delineating the mitigation area. Therefore, the applicant does not really know what the Corps would require or accept as mitigation. Furthermore, there is increasing evidence that isolated pockets of tidal marsh do little to provide viable habitat.

The Commission should determine whether the proposed public access areas should contain a pickleweed marsh area and whether the overall public access plan, including the \$100,000 contribution toward the expansion of Dunphy Park, constitutes the maximum feasible public access consistent with the project.

3. **Houseboat Policies.** The Bay Plan policies on houseboats require, in part, that "the Commission should authorize houseboats used for residential purposes in existing houseboat marinas only when each of the following conditions are met: (a) The project would be consistent with a special area plan adopted by the Commission for the geographic vicinity of the project; (b) ...the houseboats would be limited in number and would be only a minor addition to existing number of authorized houseboats; (c) All wastewater producing facilities would be connected directly to a shoreside sewage treatment facility; (d) No additional fill would be required except for the houseboat itself, a pedestrian pier on pilings, and for minor fill for improving shoreline appearance or for producing new public access to the Bay; (e) The houseboats would float at all stages of the tide...unless it is determined that requiring flotation at all tidal stages would have a greater

adverse environmental effect on the Bay, and would not result in increased sedimentation in the area; (f) The houseboats would not block views of the Bay significantly from the shoreline; (g) The project would comply with local government plans and enforceable regulations...; and (h) The project would be limited in cost and duration so that the tidelands and submerged lands could be released for water-oriented uses and Public Trust needs and, in no case, would the initial or any subsequent period of authorization exceed 20 years....”

The *Richardson Bay Special Area Plan* (RBSAP), which was prepared in cooperation with local government agencies in the Richardson Bay area, contains policies for “Residential Vessels and Floating Structures.” Policy No. 2 contains requirements for expansions to existing houseboat marinas that are similar to the Commission’s houseboat policies. Further discussion of the policies in the RBSAP is included below. It is helpful in applying the Commission’s houseboat policies to note that Policy No. 2 contains a footnote that indicates that the Gates Cooperative project would be an expansion of an existing houseboat marina. It appears that, in adopting the RBSAP, the Commission intended to evaluate Gates as an expansion of an existing houseboat marina, to which the Commission’s houseboat policies would apply.

Houseboat policy (a) applies in situations where local governments have developed special area plans that have been adopted by the Commission and contain houseboat policies. In this case, the Richardson Bay Special Area Plan (RBSAP) was developed in cooperation with several local agencies and incorporated into the Commission’s *Bay Plan*. The RBSAP generally refers to the Commission’s houseboat policies. However, a more detailed discussion of the RBSAP policies is included in the section below.

Regarding houseboat policies (b) and (c), 232 houseboats and arks currently exist in the harbor. The applicant seeks authorization for 38 additional houseboats and 3 ark replacement berths for arks no longer existing, which would be a 17% increase in the number of residential structures. The Commission should determine whether this is a minor addition to the marina. All residential structures in the harbor, including Gates houseboats, are connected directly to an upland sewage treatment facility. The sewage connection for the 38 Gates Co-op docks would be replaced on the new dock.

Policy (d) describes allowable fill within existing houseboat marinas. Most of the additional fill for the harbor would be used primarily for public access, the houseboats themselves, and ancillary marina facilities, such as piers or docks for mooring the houseboats. In addition, two public, pedestrian piers would be constructed to enhance Bay views otherwise diminished by the presence of new houseboats. Additionally, much of the new fill would improve shoreline appearance. Before the Commission’s 1971 authorization, WPH was littered with dilapidated houseboats, debris was scattered on the shoreline and in the Bay, and the houseboats were in random location resulting in coverage of an unnecessarily large area of water. The facilities were then authorized as fill to improve shoreline appearance and public access. Some debris was removed, disintegrating houseboats were removed, pile-supported docks were constructed allowing for fairways and view corridors from the shoreline, and portions of the public access were installed. The situation with the Gates Cooperative community houseboats today is similar. Many of the boats are in a state of disrepair. They are tied to a floating dock in a random and chaotic fashion, occupying an unnecessarily large area of the Bay. The new fill for the project is intended to improve the appearance of this part of the shoreline and would improve public opportunities in the anticipated public park area. As a result of Permit No. 5-71, most of the shoreline is now landscaped. The new proposal includes a fully landscaped park on new and existing fill as well, which would be a vast improvement to the gravel, parked cars, and debris that currently exist.

Houseboat policy (e) requires the houseboats to float at all stages of the tide unless it is determined that requiring flotation at all tidal stages would have a greater adverse environmental effect on the Bay, and would not result in increased sedimentation in the area. Most houseboats at WPH do not float at all stages of the tide. However, the project EIR demonstrates that the dredging required to achieve flotation at all tidal stages would have greater adverse environmental effects on the Bay than the effects resulting from houseboats sitting on the Bay bottom. The EIR indicates that, other than displacement of houseboat residents, the contaminated sediments in the harbor presents the greatest constraints on project design. Sediment samples and bivalves were taken from the project area to determine contamination levels. The sediments in the outlying areas of the harbor contained contaminant levels similar to those in the greater Richardson Bay. Generally, the contamination testing indicated the presence of concentrations of chlordanes, DDTs, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), copper, mercury, lead, zinc, and total organic carbon. The contaminant levels increased closer to the shoreline. In the Gates Co-op area, sediments were found to contain PAHs and PCBs at levels comparable to three of the most contaminated industrial sites in the estuary: Castro Cove (historic outfall of Chevron Oil's refinery in Richmond), Islais Creek (site of the San Francisco Southeast combined sewer overflow), and Mormon Channel (located in the middle of the Port of Stockton).

The project is designed to minimize disturbance of these contaminated sediments, which was determined would have a greater impact than any impacts to benthic communities resulting from shading and the weight of houseboats on the mud. This latter impact was determined to be insignificant. All work in tidal areas would take place during the lowest tides to minimize turbidity. Additionally, silt screens would be used to prevent any disturbed contaminated sediments from reaching tidal waters. It should also be noted that the contaminant levels and the nature of the contaminants would not necessarily prohibit clean up of those Bay muds. Clean up of the contaminants would appear, however, to be cost prohibitive at this time.

Houseboat policy (f) requires that houseboats would not block views of the Bay significantly from the shoreline. The EIR concludes that the project would improve current views to the Bay by cleaning up and organizing the Gates Co-op area. The BCDC staff submitted comments repeatedly indicating that the location of the proposed Gates dock in a required open-water area would impede views to the Bay from the public park and shoreline paths. An alternative with fewer visual impacts would be to first find space on existing or extended docks for the 38 Gates houseboats. Then, if a new dock was still needed, WPH could build a smaller dock that would have fewer visual impacts (see discussion on public access above). This suggestion was unacceptable to the WPH community. Thus, the project incorporated new public viewing areas and a public pier at the park to provide views to the Bay. The Commission should determine whether the new docks and houseboats block views to the Bay significantly.

Pursuant to CEQA, the Marin County Board of Supervisors, certified the Final Environmental Impact Report and adopted a resolution to approve the project on February 25, 2003 (Houseboat policy (g)).

To comply with Houseboat policy (h), the houseboats should only be authorized for a period of 20 years. The applicant is applying for a 20-year permit. If approved, the Commission would be required to conduct a study of Public Trust needs of the project area within five years of project authorization and every five years thereafter. If the Commission determines that the area is needed for water-oriented uses and Public Trust needs, the houseboat use could be terminated after the 20-year period.

The Commission should determine whether the proposed marina expansion satisfies the Bay Plan criteria for additions to existing houseboat marinas.



4. **Richardson Bay Special Area Plan.** The *Richardson Bay Special Area Plan* (RBSAP) was prepared by the Commission in cooperation with the County of Marin, the Town of Tiburon, and the Cities of Belvedere, Mill Valley and Sausalito. The RBSAP was adopted as a part of the *San Francisco Bay Plan* in April 1984. The RBSAP policies on floating homes state, in part, that: “(a) vessels and floating structures used for residential purposes...should be allowed only in recreational or houseboat marina berths when consistent with and in compliance with local codes. All anchor-outs should be removed from Richardson Bay; (b) within the existing houseboat marinas, limited numbers of new berths should be authorized to accommodate some of the anchor-out houseboats which existed in Richardson Bay on or prior to September 30, 1983, provided the anchor-out houseboat is in compliance with the applicable policies; and policies of the Special Area Plan. No new houseboat marinas should be authorized; and (c) any vessel or floating structure used primarily for a nonwater-oriented use such as an office, commercial, or industrial use should not be permitted in Richardson Bay.”

- a. **RBSAP Residential Vessels and Floating Structures Policies.** Regarding the first policy, the applicant seeks authorization of a houseboat marina in an area designated in the RBSAP as “Houseboat”. The County of Marin granted local approval for the project finding it to be in compliance with local codes and determining that the property has been determined to be undesirable and not feasible for Public Trust uses. This Commission and the State Lands Commission have yet to determine the desirability and feasibility of Public Trust uses on the property. Public Trust uses and needs are discussed in detail above.

The second policy allows a limited number of new berths within existing houseboat marinas in order to accommodate anchor-out houseboats that existed in Richardson Bay on or prior to September 30, 1983. Although Permit No. 5-71 expired more than 10 years ago and the Commission’s houseboat policies only allow temporary authorizations, WPH currently exists as a 231-berth houseboat marina. The proposal would increase the harbor by 38 houseboats berths and 3 ark-replacement berths or approximately 17%. The settlement agreement establishes that the 38 houseboats existed in Richardson Bay prior to September 30, 1983, and the County approval establishes that the project is consistent with local codes.

The third policy only applies to recreational boat marinas and the fourth policy above prohibits nonwater-oriented uses other than residential uses in Richardson Bay. The application does not acknowledge the existence of any uses other than residential uses in the harbor. The applicant seeks authorization for the harbor maintenance area located on Dock A, but counts it as one of the 283 residential structures. The applicant’s response to staff inquiries about the harbor maintenance area indicate that it includes a working boat shop on a 3,500-square-foot, floating barge, a pile-driver for contract work within the marina, and a storage area. It appears that there is no residential use of the barge and the uses are floating industrial uses, some of which may be water-oriented.

The applicant asserts that, though the harbor maintenance area was not specifically authorized in Permit No. 5-71, it has been shown on WPH project plans since 1971. The staff agrees that the authorization section clearly does not include a marine services facility on Dock A, nor is there any mention of such a facility in the findings and declarations. In addition, construction plans for Dock “A” that were approved consistent with Permit No. 5-71 do not show a harbor maintenance area. Instead, the plans show three to four houseboat berths in the current location of T.J. Nelson’s facilities. The current proposed plan shows a boxed area defining T.J. Nelson’s facilities that appears much larger than the area currently covered by these facilities. The plans show a barge that is approximately 3,520 square feet and a “floating equipment area” of the same size for a total of 7,040. The staff visited the site on several occasions and saw considerable debris stored on the barge. The floating

equipment area contains a pile driver that appears to be about half the size of the area delineated on the plans. The applicant states that “the floating equipment area may, from time to time, include the storage of barges, piles, and other floating equipment needed for harbor maintenance.” The space outlined on the plans could potentially be occupied by four Gates houseboats. The staff believes that some of the harbor maintenance facilities could be considered water-oriented, but that there should not be any floating storage of equipment or debris. The Commission should determine whether harbor maintenance use is a water-oriented use constituting the minimum fill necessary with no upland location and, if so, how much of the facility is necessary for that use.

- b. **Public Access, Views, and Vistas.** The RBSAP also contains policies for public access, views, and vistas. These policies are substantially the same as the public access policies in the *Bay Plan* with a few important differences discussed below.

Policy No. 9 states that all local, regional, and state agencies should work together to provide new public access and parks, especially to link the existing shoreline parks and public access areas to the extent feasible without additional filling in the Bay or adversely affecting natural resources. In light of the staff’s opinion that the value of visual and physical access at the park was compromised by the addition of a houseboat dock, new residences and loss of open-water views, and the lack of upland area available for additional public access on-site, the staff suggested to the applicant that in-lieu public access might be required to satisfy the requirement of maximum feasible public access consistent with the project. After meeting several times with the applicant’s representatives to discuss possible in-lieu public access, the staff met with City of Sausalito officials to discuss purchase of the some privately owned properties adjacent to Dunphy Park. The result of such a purchase would be an expansion of the shoreline park and an increase in visual and physical access to the Bay. A contribution from the applicant to make the purchase feasible would provide in-lieu public access. The staff has continually maintained that the contribution toward the expansion of Dunphy park could be in-lieu public access for the WPH project, and the staff believes that said contribution, in combination with the proposed public access at WPH, as reviewed by the Design Review Board, could be considered maximum feasible public access consistent with the project.

Policy No. 11. states that the public should have clear visual link between public thoroughfares and shoreline public access areas so that the public nature of shoreline access areas is clear. The nearest public thoroughfare, the intersection of Bridgeway and Gate 6 Road, was a focus of the Design Review Board’s comments on the public access proposal. The Board concluded that the proposal (reviewed without the pickleweed mitigation area) would sufficiently protect important view corridors and that the park design was sufficient to move forward with the project and go before the Commission. However, the Board requested a fourth review of the proposal after any Commission authorization and recommended an even stronger connection between Bridgeway and Gate 6 Road. The Board requested to review public access details to enhance this connection after any Commission authorization. The discussion below also details why the addition of a pickleweed mitigation area to the public park is a significant change in the park design that may not adequately address the Board’s concerns regarding connections to and through the park.

The Commission should determine whether the project is consistent with the Richardson Bay Special Area Plan policies on floating residential structures and public access.

- 5. **Mitigation.** The project would result in placement of 26,281 square feet of new Bay fill. Adverse impacts due to fill for residences include the reduction in Bay surface area, loss of subtidal habitat and mudflat, and shading. These impacts may require mitigation. The applicable Bay Plan policies on mitigation can be summarized as follows: (1) “[p]rojects should be designed to avoid adverse environmental impacts to Bay natural resources such

as to water surface area, volume, or circulation and to plants, fish other aquatic organisms and wildlife habitat, subtidal area, or tidal marshes or tidal flats....[Unavoidable] adverse impacts...should be minimized to the greatest extent practicable...measures to compensate for unavoidable adverse impacts to the natural resources of the Bay should be required. Mitigation is not a substitute for meeting the other requirements of the McAteer-Petris Act;" (2) "Individual compensatory mitigation projects should be sited and designed within a Bay-wide ecological context, as close to the impact site as practicable...;" (3) "When determining the appropriate location and design of compensatory mitigation, the Commission should also consider potential effects on benefits provided to humans from Bay natural resources, including economic (e.g. flood protection, erosion control) and social (e.g. aesthetic benefits, recreational opportunities);" (4) "The amount and type of compensatory mitigation should be determined for each mitigation project based on a clearly identified rationale that includes an analysis of...the probability of success...the expected time delay...the type and quality of the proposed mitigation site...;" (5) "Mitigation programs should be coordinated with all affected local, state, and federal agencies having jurisdiction...;" and (6) "the Commission may allow fee-based mitigation when other compensatory mitigation measures are infeasible."

Mitigation Policy No. 7 provides guidelines for Commission review of mitigation proposals. First, the mitigation should be reviewed as part of the project. The mitigation program should describe the proposed design, construction and management of mitigation areas and include: (a) clear mitigation goals; (b) clear and measurable performance standards; (c) a monitoring plan; (d) a contingency plan; and (e) provisions for the long-term maintenance, management and protection of the mitigation site.

WPH proposes a public benefits package, a portion of which is clearly proposed as mitigation for Bay fill. The remainder of the public benefits package was not proposed to address any specific adverse impacts associated with the project. In addition, WPH proposes a pickleweed mitigation area for impacts to existing pickleweed on the site.

- a. **Pickleweed Mitigation Area.** As discussed above under the public access section, the applicant submitted for the first time a pickleweed mitigation plan on December 15, 2003. The new plan would occupy approximately 3,897 square feet of what had been proposed as usable park area, including a pathway connecting to the existing shoreline path. The applicant believes that the mitigation area is a form of public access. The applicant states that the mitigation area is appropriately proposed as public access because it would enhance the public access just as landscaping does. It could provide an educational, interpretive experience for the public. However, the staff believes that the mitigation area is not usable public space as required in the *Bay Plan* public access policies and is, therefore, summarized in both the public access section and this mitigation section.

The applicant originally relied on a 1995 Army Corps jurisdictional determination to estimate the square footage of pickleweed on the site. Since that time, the pickleweed area has grown in size to cover approximately 2,652 square feet. The pickleweed is located in small patches throughout the site, with one larger patch located west of the Appleton Ark. The total area of pickleweed that is proposed for preservation within the public access proposal is 1,921 square feet, the majority of which is the larger area near the Appleton Ark. The area formerly proposed for shoreline the public access that is now proposed for creation of new pickleweed is approximately 1,976 square feet for a total of approximately 3,897 square feet within the public access park. The area of pickleweed protection and creation outside the public access park is approximately 1,458 square feet, located in several small sites along the shoreline.

The mitigation policies specify the type of information that should be submitted with a mitigation proposal. First, the mitigation should be reviewed as part of the project. In this case, a mitigation proposal was vaguely identified in the EIR and a revised proposal was submitted as part of this permit application at the last minute. Second, the mitigation program should describe the proposed design, construction and management of mitigation areas and include: (a) clear mitigation goals; (b) clear and measurable performance standards; (c) a monitoring plan; (d) a contingency plan; and (e) provisions for the long-term maintenance, management and protection of the mitigation site. The applicant does not have a restoration plan, which would state precise mitigation goals and measurable performance standards. A restoration plan would indicate the feasibility of creating new pickleweed marsh in front of a quay wall in this area, whether reference sites exist for comparisons, and whether grading would be required to attain the elevations required for pickleweed mitigation. In light of the siting in front of a quay wall, a restoration plan should include a hydrologist's analysis of the potential wave effects and expected sedimentation rates in front of the quay wall. Finally, the potential value of a small restoration at this site is not known. As stated previously, there may be problems in restoring tidal marsh in areas of high contamination.

The mitigation proposal also does not include a monitoring report with contingency plans and provisions for long-term maintenance. The applicant has a 1995 jurisdictional determination from the Army Corps of Engineers, but did not submit a permit application to the Corp prior to delineating the mitigation area. Therefore, the applicant does not really know what the Army Corps would require or accept as mitigation. Furthermore, there is increasing evidence that isolated pockets of tidal marsh do little to provide viable habitat, which is why the mitigation policies also recommend that individual compensatory mitigation projects should be sited and designed within a Bay-wide ecological context. While the mitigation policies state a preference for avoiding on-site impacts and implementing mitigation as close to the adverse impact as possible, this proposal may not accomplish either goal.

The Commission should determine whether the proposed pickleweed mitigation proposal is consistent with the Commission's mitigation policies and whether the addition of the mitigation area to the public access park is consistent with the Commission's public access policies.

- b. **Open Water Mitigation.** The project involves approximately 26,281 square feet of new fill from the Gates houseboats and associated facilities in addition to the estimated 347,163 square feet of old fill authorized under BCDC Permit No. 5-71. At the time of the 1971 authorization, the Commission did not have mitigation policies in place and thus, did not require mitigation for the fill.

As noted above, the applicant states that it is offering the following specific public benefits:

- (1) Based on the applicant's appraisal, a \$539,000 benefit to the state that would result from the land swap (Exhibit G);
- (2) Based on the applicant's appraisal, two additional, off-site parcels in the land swap worth approximately \$136,917 (proposed specifically as mitigation for new Bay fill); and
- (3) The undocumented removal of 58,000 square feet of debris from the Bay at a cost of \$1 million.

These mitigation offers may not be consistent with the Commissions mitigation policies. All three proposals raise a similar issue. The proposals are either based on the applicant's appraisal of the land exchange or based on undocumented removal of debris. As discussed in the section on Bay fill above, the staff believes that the Commission should also evaluate the following issues relating to the public benefits package:

- (1) With regards to the land swap that the applicant states would provide a net gain in value of \$539,000 to the state, the concept of such an exchange was originally required in the settlement agreement because private residences were occupying state-owned tidelands in contravention of the Public Trust. The land swap was always intended to address Public Trust issues. As noted in the section on Bay fill above, proposing any net benefits from the land swap as mitigation presents the following issues: (1) the land swap results in a large benefit to WPH; (2) pursuant to state law, while the SLC staff believes the land swap would result in a net benefit to the state, the SLC makes an independent appraisal and final decision but does not "credit" the applicant with a dollar value. Further, the SLC staff does not agree that private land conveyed to the state could serve as "mitigation;" (3) the land swap does not necessarily result in permanent open water areas; and (4) the applicant offers what it believes is a net benefit to the state as mitigation, but does not specify the impact that would be mitigated. While the staff has attempted to fit each mitigation proposal with an adverse impact, the staff believes it is questionable that the net benefit from the land swap should be considered as mitigation, but rather as a resolution to the Public Trust issues arising from the private occupancy of state-owned tidelands. The staff further believes that it is questionable whether this proposal would conform to the Bay Plan policies on mitigation.
- (2) Regarding the applicant's second offer of two parcels valued at approximately \$136,917. Like the mitigation offer above, placing lands in state ownership does not necessarily protect them from development for water-oriented purposes. Acceptable mitigation proposals for Bay fill generally include removal of fill from the project site or nearby. This would be in addition to unauthorized fill that already must be removed to satisfy the terms of the settlement agreement. Therefore, it is questionable whether this offer, when considered as mitigation for Bay fill, conforms to the *Bay Plan* policies on mitigation. A more direct offset of adverse impacts may be the inclusion of these properties in the land exchange as mitigation to offset lost Public Trust opportunities. The Public Trust section below includes a discussion about the distinction between Public Trust needs and Public Trust opportunities.
- (3) Regarding WPH's proposal to include debris removal as mitigation. The settlement agreement requires WPH to remove debris from the harbor that was not authorized by the Commission. Since the debris was not authorized by the previous permit and has not been authorized since, it would not be allowed to remain in any case. The staff believes that the documented removal of any debris that predates BCDC is, however, a clear public benefit.

In the past, the Commission has generally accepted mitigation for open-water fill that results in removal from fill in another, preferably nearby, location. In addition, the Commission generally does not approve projects with a mitigation proposal that addresses two separate and distinct adverse impacts. For example, in this case, the applicant offers as mitigation any net benefit to the state from the land exchange.

The Commission should determine whether the mitigation proposals are adequate to mitigate for the impact of approximately 26,281 square feet of new Bay fill and are consistent with the mitigation policies.

6. **Public Trust.** The following Public Trust needs assessment is included herein to facilitate a Commission determination on whether the project is consistent with Public Trust needs for the area and specifically with *Bay Plan* houseboat policy (h). This policy states that: “[t]he Commission should authorize houseboats used for residential purposes in existing houseboat marinas only when each of the following conditions is met:...(h) The project would be limited in cost and duration so that the tidelands and submerged lands could be released for water-oriented uses and Public Trust needs and, in no case, would the initial or any subsequent period of authorization exceed 20 years. The Commission should conduct a study of Public Trust needs of the project area within five years of project authorization or reauthorization and every five years thereafter. If the Commission determines within the first five years of authorization that the area is needed for water-oriented uses and Public Trust needs, the project should be terminated at the end of the 20-year authorization period. If after the first five-year period of project authorization the Commission determines that the area is needed for water-oriented uses and Public Trust needs, the project should be terminated no less than 15 years from the date of Commission determination. In any event, the original 20 years of the permit’s authorization period cannot be extended or renewed by the Commission unless an application is filed for such purpose....”

The *Richardson Bay Special Area Plan* contains Public Trust findings under the section on Residential Vessels and Floating Structures based on advice from the Office of the Attorney General. The findings provide helpful guidelines for determining whether a project is consistent with the Public Trust. Finding No. 6(b) states:

On privately patented tidelands, houseboats and live-aboards used for long-term residential purposes could be permitted, consistent with Public Trust principles, only if the use would not be inconsistent with Public Trust needs. In assessing whether houseboat or live-aboard use would be inconsistent with trust needs in a given instance, the following issues should be considered: (1) whether the use will interfere with existing Public Trust uses, such as public access to the Bay, navigation, commerce, fishing, scenic view corridors and wildlife habitat; (2) whether the lands are currently needed for Public Trust uses; (3) whether the use will interfere with future Public Trust uses in the area; [and] (4) whether the subject area is relatively small in relation to the time for which the lands will be devoted to non-trust uses....

- a. **Public Trust Needs Assessment.** At the staff’s request, the applicant submitted an analysis of Public Trust needs of the area including data from the City of Sausalito and Richardson Bay area. The data examines Public Trust uses such as public access to the Bay, public views of the Bay, recreation, navigation, commerce, fishing, and open space and wildlife habitat preservation. A finding that Public Trust needs are satisfied now would likely hold true for the next few years. New development requires planning, local permits, state and federal permits. This usually takes a number of years. Therefore, it is unlikely that WPH’s impact on Public Trust needs would change in the next few years. By the fifth year, Houseboat Policy (h) requires preparation of a new Public Trust needs assessment.
  - (1) **Whether The Use Will Interfere With Existing Public Trust Uses.** The constraints of most of the project site make some Public Trust uses at the site infeasible. The harbor is very shallow making much of it off-limits for sailboats and larger recreational boats. Additionally, as established in the section above on minimizing impacts of Bay fill, sediments located in the inner areas of the harbor contain contaminant levels similar to some of the most contaminated sites in the greater San

Francisco Bay. Thus, it is currently infeasible to dredge the harbor. The contaminated sediments also make the harbor less than suitable for swimming or any kind of recreation that would result in sediment disturbance. The tests performed on bivalves in the harbor indicate that promoting fishing within the harbor would present a public health risk. The files for BCDC Permit No. 5-71 indicate that soil contamination was an issue in 1971 as well. The nature of the contaminants indicate that the majority of the contamination occurred when the site was used as a ship-building facility in the 1940s and 1950s.

If the harbor were not used as a houseboat marina, it could possibly be used as wildlife habitat and open-water viewing. Given the level of contamination in the harbor, it appears unwise to manage it for wildlife habitat. Regarding open-water views, the project as it exists does block some open-water views and the proposed addition would further block open-water views. However, the project includes alternatives for viewing limited areas of open water by organizing the docks with fairways creating small open-water areas sheltered by the houseboat community. The project would facilitate open-water viewing by including a shoreline path, a public shoreline park, two public piers, and a strong connection from Bridgeway that would draw the public to the shoreline. Also, the project would provide an off-site opportunity to view a larger open-water area by contributing to the expansion at Dunphy Park.

Richardson Bay supports one commercial fishery: the herring fishery. Herring eggs adhere to underwater surfaces such as eel grass, piles, and docks. The EIR concludes that the only suitable areas for herring spawning in the harbor are the man-made structures, but the existing site is not suitable for use by the herring fishing industry because of its shallow depth and numerous structures.

Based on this assessment, the Commission should determine whether the project interferes with existing Public Trust uses.

- (2) **Whether The Lands Are Currently Needed For Public Trust Uses.** Evaluating the need for each Public Trust use in Sausalito and Richardson Bay is a very complex and difficult task. The regional and planning efforts to do this type of evaluation over the years have included thousands of hours of public hearings where the Public Trust needs and uses have been anticipated. It has been assumed for this analysis that the current local and state agency public policy and regulations now in place are designed to preserve, protect and provide for the needs of the public. The objective of this analysis is to look at the project-specific impacts to Public Trust needs in the context of the larger Richardson Bay and Sausalito areas.
  - (a) **Recreation, Public Access, Views.** The results of a simple survey of the existing recreational boat marinas is attached as Appendix A. The survey indicates that within the study area there are 1,665 slips available for 15 to 80-foot-long boats at 10 recreational boat marinas. Three of the marinas have available slips. One marina provides a public boat launch for a fee of \$15. None of the marinas have slips available for day use, either free or fee based (referred to in the attachment as public berth rentals). Two of the marinas have large boats available for public rentals. Additionally, there are three additional boat rental providers in the area. From this data, it could be concluded that there is no additional need for recreational boating slips and launches. As established above, WPH could not currently satisfy any need for recreational boating. Recreational boating and use of small personal watercraft such as kayaks and canoes is not recommended in WPH. The harbor is too shallow and sediments are too

contaminated to dredge. For the same reasons, the harbor would be an unlikely place to locate a recreational boating marina. It should be noted that the nature of the contamination would not preclude clean-up efforts, but clean-up is cost prohibitive at this time. If, at some future date, soil contamination clean-up becomes feasible, the project site could be suitable for recreational boating, a recreational boat marina, or other Public Trust uses.

There are currently over 9 shoreline parks in the Sausalito/Richardson Bay areas (see Appendix A). Many of these parks have unimpeded Bay views, shoreline pathways, public personal water craft launches. According to phone interviews with the Sausalito Parks and Recreation Department and Marin County Open Space District staffs, these parks are not crowded or heavily used. One exception is Dunphy Park, which is a Sausalito city park. Based on the interviews, the park uses generally include walking and viewing, with very limited recreational fishing activity.

- (b) **Environmental Protection.** There are two wildlife sanctuary areas in Richardson Bay and many acres of high value, functioning tidal marsh. Nearly all of the east and north sides of the Bay is preserved tidal marsh. In addition, the Richardson Bay Wildlife Sanctuary, located between Strawberry Point and Tiburon, has been impacted by the use of personal watercraft and is now closed to such use from October to March. This indicates a need to balance trust uses within Richardson Bay. If additional refuges within Richardson Bay were needed, once again it appears that the WPH site would not be an appropriate location for such a use at this time. The project EIR studied the benthic, aquatic and terrestrial biological values of the WPH property (see above section on minimizing impacts of Bay fill). The EIR concludes that the benthic conditions have been heavily degraded due to many years of human use. As noted, the EIR found that the only substrate that would support spawning is the man-made structures at the harbor. Scientists concluded that the existing aquatic conditions are also degraded by many years of human use. The issue of soil contamination is discussed above.
- (c) **Commerce and Navigation.** Historically, the deep water shoreline of the City of Sausalito was used for ship building. The ship building efforts included the construction of a dry dock in the middle of Richardson Bay that has been removed in the past 10 years. Over the years sedimentation has reduced the navigability of the Richardson Bay channel. The WPH property to the north of Sausalito is a tidal mud flat area. Even navigation of small shallow draft boats and personal watercraft in these areas is difficult. Port use and water-related industrial uses or cargo transport use in this location are not desirable and/or feasible even with significant dredging. The *San Francisco Bay Plan* and Seaport Plan designations and needs assessments have not identified commerce and navigation, port, or water-related industrial uses for Richardson Bay.

The Commission should determine whether the WPH lands are currently needed for Public Trust Uses.

- (3) **Whether The Use Will Interfere With Future Public Trust Uses In The Area.** Houseboat Policy (h) addresses this issue by requiring a Public Trust needs assessment every five years, which could result in termination of the authorization if the Commission determines that the project is interfering with Public Trust needs. This assessment assumes that changes in Public Trust needs would take place slowly. A finding that Public Trust needs are satisfied now would likely hold true for the next few years. New development or a new wildlife refuge large enough to



create a significant change to WPH's impact on Public Trust needs would require planning, local permits, state and federal permits. This usually takes a number of years. Therefore, it is unlikely that WPH's impact on Public Trust needs would change in the next few years. By the fifth year, a new Public Trust needs assessment would be prepared.

- (4) **Whether The Subject Area Is Relatively Small In Relation To The Time For Which The Lands Will Be Devoted To No-Trust Uses.** The vicinity map included as Exhibit 1 shows the project size in relation to the entire Richardson Bay. Richardson Bay is many hundreds of acres and the project site is only 44 acres, including areas in the land swap. As noted, Richardson Bay has 10 recreational boating marinas, 3 boat rental facilities, 9 shoreline parks, acres of tidal marsh, and two wildlife sanctuaries. WPH is one marina within the Richardson Bay and is applying for a 20-year permit, the authorization of which could be discontinued if the Commission determines at a future date that there is a public need for the site in order to exercise Public Trust uses.

- b. **Public Trust Opportunities.** There is an important distinction between Public Trust needs and Public Trust opportunities. Based on the information above, it appears that the Commission could determine that there is not a need for Public Trust uses at WPH at this time. The public's ability to exercise Public Trust uses may be currently satisfied at other sites in the Richardson Bay area. However, if the water and shoreline of WPH were not occupied with private, residential structures and associated facilities, the public would have the opportunity, whether there was a need or not, to use and view open water. The site would probably develop into tidal marsh or could provide undisturbed tidal flats. Without residential structures, the open-water areas on the site would be available, although not ideal, for public recreation. The Commission should determine whether the physical presence of private residences on approximately 8 acres of the Bay and marina facilities occupying most of the WPH shoreline results in lost opportunities that require an offset, and whether the two parcels offered by the applicant in addition to the land exchange would provide such an offset.

The Commission should determine whether authorization of the project for the next 20 years, with the opportunity to reassess trust uses and needs in five years, is consistent with the Public Trust needs in the Richardson Bay area.

## B. Review Boards

1. **Engineering Criteria Review Board.** The Engineering Criteria Review Board has not reviewed the proposed project.
2. **Design Review Board.** As noted above, the Design Review Board reviewed a park design that did not include a pickleweed mitigation area. On December 15, 2003, the applicant submitted for the first time revised plans with a mitigation area in the planned shoreline park area. The Design Review Board reviewed this project at three separate meetings. The applicant revised the public access proposal after the Board's third review, replacing a portion of the proposed park with a pickleweed mitigation area. The Board has not had an opportunity to review this change in the public access design. The first meeting was August 11, 2003, where the Board determined that a site visit was necessary to review the public access proposal. The second review took place at the Bay Model on September 24, 2003, after a tour of the project site. The Board determined that there were certain view corridors that were particularly important and should not have boats located where views would be blocked. It also indicated that the park area should have a design that provides visual connection and physical access into the park from the corner of Bridgeway Boulevard and Gate Six Road. The applicant responded by proposing a revised park design, by relocating some of the houseboats that would block important view corridors, and by proposing a dock extension at one of the important view corridors. The Board also considered comments that construction of a new dock for Gates houseboats

would adversely affect the private owner of adjacent houseboats and arks. The Board has considered similar views in other projects, but the guiding policies focus on impacts on public views of the Bay and shoreline. The Board reviewed the revised proposal a third time at the Sausalito School District on October 27, 2003. The Board concluded that the revised proposal would sufficiently protect important view corridors and that the park design was sufficient to move forward with the project and go before the Commission. However, the Board requested a fourth review of the proposal after any Commission authorization and made the following recommendations: (1) the public access should begin at the intersection of Bridgeway and Gate Six Road and a range of "tools" and details should be used to enhance the entrance to the shoreline. Recommendations included creating a raised crossing in the parking lot near the intersection, creating paving that feels public, and widening the path that leads to the shoreline from the intersection; (2) the access to the park from the intersection must be very clear, and the parking lot should not "water down" a strong axis to the shoreline; (3) some parking might need to be reconfigured to create an acceptable park design; (4) a design development package should be submitted for the Board's review after Commission approval, but prior to final plan review and construction; and (5) There should be regulatory controls on the harbor with regard to size of boats and slips.

- C. **Environmental Review.** Pursuant to CEQA, the Marin County Board of Supervisors, certified the Final Environmental Impact Report for the project on February 25, 2003.

D. **Relevant Portions of the McAteer-Petris Act.**

Section 66602

Section 66605

Section 66610

Section 66632

E. **Relevant Portions of the San Francisco Bay Plan.**

*San Francisco Bay Plan* Policies on Water Quality (page 17).

*San Francisco Bay Plan* Policies on Water Surface Area and Volume (page 20).

*San Francisco Bay Plan* Fills in Accord with Bay Plan (page 65)

*San Francisco Bay Plan* Policies on Public Access (page 55).

*San Francisco Bay Plan* Policies on Recreation (page 49).

*San Francisco Bay Plan* Policies on Other Uses of the Bay and Shoreline  
(houseboat policies, page 63).

*San Francisco Bay Plan* Policies on Mitigation (page 69).

*San Francisco Bay Plan* Policies on the Public Trust (page 72).

F. **Relevant Portions of the Commission's Regulations.**

Chapters 3, 4, and 5: Major Permit Procedures (pages 508 to 518).

**Exhibits**

- A. **Vicinity Map**
- B. **Context Map**
- C. **Existing Conditions Plan**
- D. **Area of Guaranteed Public Access Within Park**
- E. **Area of Guaranteed Public Access Outside Park**
- F. **View Corridors**
- G. **Land Swap Proposed Ownership**
- H. **Proposed Site Plan**
- I. **Pickleweed Mitigation Proposal**
- J. **Public Access Proposal Not Reviewed by DRB**
- K. **Public Access Proposal Reviewed by DRB**

**Appendices**

- A. **The Applicant's Public Trust Needs Data and Policy Summary**
- B. **EIR Project Impacts Summary**